

pressure on these groups.” However, the group warned: “During its deliberations, the Study Group was advised that a complete U.S. withdrawal without a peace agreement would allow these groups to gradually rebuild their capabilities in the Afghanistan Pakistan region such that they might be able to attack the U.S. homeland within eighteen to thirty six months.” This timeline is short, alarming, and has direct implications for our national security.

Also, an immediate concern as the United States begins to withdraw is an increase in attacks from Afghan forces against the United States and coalition forces, commonly referred to as “green on blue attacks.” Finally, we must anticipate a flood of refugees as Afghans flee the chaos. In addition, we must do our part to aid those Afghans who have aided us.

Given these facts and given the President's difficult decision to leave Afghanistan, I believe we must take serious actions to mitigate these threats. The withdrawal of U.S. forces should not mean an end to our counterterrorism efforts. Most importantly, we must ensure that Afghanistan will not be a source of planning, plotting, or projection of terrorist attacks around the globe, including against our homeland.

Instead, we must transition to a new type of presence leaving the country but staying in the region in a meaningful capacity. We must build an anti terrorism infrastructure on the periphery of Afghanistan. We must continue to direct the proper level of attention, intelligence, and resources to evaluate the evolving terrorist threat in the region. This also includes closer cooperation with our allies and partners.

We must continue to engage regional powers diplomatically, and the Biden administration has already begun to reinvigorate that process. We must use the power of our alliances and particularly those in the region who would endure severe consequences and instability from sharing a border with a failed Afghanistan. Working in cooperation, the United States and its allies and regional partners must be a check on potential instability.

President Biden is committed to ensuring that this is not a forever war. But he has also made it clear he won't allow Afghanistan to become a safe haven for terrorism. Our mission to protect the homeland remains. Our duty to do so remains. As we go forward, this is a moment of transition, not of closure; this is a moment to do all we can to protect this country and hopefully ensure a safer region.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

MOTION TO DISCHARGE

Mr. LEE. Mr. President, I stand today in opposition to this illegitimate motion to discharge the nomination of Vanita Gupta to become the Associate Attorney General of the United States.

I say that this motion to discharge is illegitimate because it was—because

the Senate Judiciary Committee and its chairman decided unilaterally to ram through a vote on Ms. Gupta in violation of the rules and precedents of the Senate Judiciary Committee.

As has been the longstanding tradition in the Judiciary Committee, members were debating the nomination of Vanita Gupta and expected that everyone would be given the opportunity to speak.

But in the middle of a speech being delivered by one of the Judiciary Committee's members, Senator COTTON from Arkansas, the chairman of the committee, Senator DURBIN, cut him off and unilaterally proceeded to a vote, effectively nuking the committee rules that should have allowed Senator COTTON and others to speak.

Never, in the more than 10 years that I have served on the Judiciary Committee, have I seen a chairman of that committee so blatantly, brazenly violate rule and principle and precedent in this way. This behavior is not only unusual, but it is inexcusable.

Lengthy debate in committee markups is actually much more common than some in this Chamber might have you believe. For example, Democrats filibustered the nomination of former Attorney General Jeff Sessions for so long that then-Chairman CHUCK GRASSLEY was forced to delay a consideration of his nomination until the next markup.

You have got that right. Chairman GRASSLEY actually followed the committee rules and allowed for all of our colleagues to speak, notwithstanding the fact that they disagreed with him, notwithstanding the fact that it was contentious, notwithstanding the fact that he didn't like what they were saying.

And by doing so, he was forced—because he was complying with the rules and the precedents of the Senate—to delay the consideration of Attorney General Sessions' nomination. But that is what he did. He did that instead because it was preferable to an act of unilaterally forcing a vote and thereby nuking the Judiciary Committee's rules.

Now, to put this in context, we need to understand that Judiciary Committee rule IV states:

The Chair shall enter a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bringing a matter to a vote without further debate, a roll call vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with twelve votes in the affirmative, one of which must be cast by the minority.

Rule IV essentially preserves the right of minority members to speak.

Chairman DURBIN decided to nuke that part of rule IV in particular because he knew that he didn't have 12 votes to prematurely end debate.

Now, when you are in the majority, it can be tempting to run right past certain rules, knocking things over in the process in order to get your party's

nominees confirmed. But I think it is important for us to resist that temptation in order to protect the rules of our institution from partisan passions.

Following these rules, respecting minority prerogatives, is precisely what allows us to maintain bipartisan cooperation in the Senate and lower the partisan tensions in our country. This is all the more important when we consider that there is no true majority in the Senate, and there is no majority at all on the Senate Judiciary Committee.

Unfortunately, with this breach, it looks like some of my colleagues might prefer convenience over debate. I find that most unfortunate, especially because I have worked with so many of them on a bipartisan basis on so many issues.

Now, some of my colleagues may claim that Republicans have done this very thing many times. That, however, is not the case. On multiple occasions, we allowed for extended debate and even delayed reporting of matters before the committee, like Attorney General Sessions' nomination and the Crossfire Hurricane subpoenas, until the next markup. When we set votes with the consent of the majority, the chairman followed committee precedent and did so through a rollcall vote—again, consistent with committee precedent.

NOMINATION OF VANITA GUPTA

Now, you might ask why Republicans felt so strongly about speaking on Ms. Gupta's nomination before the vote was cast in the committee markup. Well, it might have something to do with the fact that Ms. Gupta's answers to questions were troubling to many members on the committee, including answers to questions regarding a wide range of topics, including the legalization of narcotics, eliminating qualified immunity, defunding police, the death penalty, among many others, and the fact that it appears that many of those answers were inconsistent with her past statements, and in other cases, difficult to defend.

When before the Judiciary Committee, Ms. Gupta provided answers to questions regarding some of these evolving positions. Many of those answers were less than compelling—indeed, she seemed to be intending to distance herself from fairly radical positions that she had, in fact, taken in the past.

Before the same committee, the Senate Judiciary Committee, the very same Judiciary Committee that recently had this markup vote that ended in a violation of the Senate rules—before that very same committee last year, on June 16, 2020, Ms. Gupta testified under oath that leaders must “heed calls . . . to decrease police budgets and the scope, role, and responsibility of police in our lives.” When asked about her advocacy for defunding the police, Ms. Gupta said that she “disagreed” with that characterization.

Even the Washington Post, not exactly a conservative media outlet, caught Ms. Gupta's flip-flop, correctly characterizing her June 16, 2020, testimony as "exactly what 'defunding the police' is all about. Now Gupta says she has never supported the idea."

Now, does President Biden really think it is a good idea to put radical ideologues who have publicly espoused support for defunding the police in charge of the Department of Justice?

Well, perhaps he does, as evidenced by his nominations of Vanita Gupta and Kristen Clarke for top roles.

I am concerned about Ms. Gupta's apparent disregard for Americans who hold views dissimilar from her own. In 2018, she tweeted that Senator SUSAN COLLINS had failed her constituents based on her support for Justice Brett Kavanaugh and was "sending a dangerous message" to survivors of sexual assault.

While Ms. Gupta repeatedly asked Senators for forgiveness for her many inappropriate tweets and asked for a second chance, it is significant here that she didn't give that second chance to others when the shoe was on the other foot.

For example, when Ryan Bounds was nominated to the U.S. Court of Appeals for the Ninth Circuit, Ms. Gupta said the following about some comments he had made when he was in college:

While he has recently apologized for those comments, the timing of that apology suggests it is one of convenience rather than remorse, offered in a last-ditch effort to salvage his nomination and win the support of his home-state senators.

It appears here that Ms. Gupta perhaps wants to provide no grace, no second chance to others for things they wrote in college but then has asked for Senators to give her grace and a second chance for insensitive statements from only a few years ago or, in some cases, only a few months ago.

If past practices are any indication, I am concerned that she might begin to wield the Department of Justice as a weapon of sorts against anyone and anything holding different views from her own and that she may do so aggressively by conducting as many expensive, hostile pattern-and-practice investigations against State and local law enforcement as she can, whether they are warranted or not, if, in her view, they somehow deserve it or they somehow disagree with her. Based on her past use of pattern-and-practice investigations while she was running the Department of Justice's Civil Rights Division, I worry that she might subject State and local law enforcement jurisdictions to lengthy and expensive review requirements, forcing them to buckle under her policy preferences and sending warning messages to other jurisdictions.

I am concerned that she might inappropriately rely on the outside activist groups for which she has lobbied to formulate policy and practices for the Department of Justice and State and

local law enforcement agencies. I am concerned, too, that she will use third-party settlement agreements to reward the activist groups for which she has lobbied at the expense of others.

Now, advocates of Ms. Gupta claim frequently that she is a consensus builder. I don't doubt that. In fact, I would note here that Ms. Gupta and I have worked on the same side of issues that I care deeply about, and I note here that I find her to be a delightful person and a remarkably gifted mind and lawyer. She is very talented, and she is someone who seems to be a genuinely nice person in many, many ways. But if we are going to talk about consensus building, I think a fair test to evaluate whether someone is a consensus builder might involve looking at how they treat those with whom they disagree. Unfortunately, Ms. Gupta's public statements don't necessarily result in flying colors on that test. Again, the issue here is not whether she agrees with those who disagree with her. We have already established that she disagrees with those who hold different views than her own. The question is, How does she treat them?

Here is what Ms. Gupta said about Judge Sarah Pitlyk:

Sarah Pitlyk is unqualified and unfit for a lifetime position on our federal courts. . . . She has defended the most extreme, anti-abortion laws our Nation has seen to date.

This is what she said about Judge Lee Rudofsky:

Rudofsky . . . has challenged the constitutionality of reproductive rights under the Fourteenth Amendment and has effectively asked the Supreme Court to overturn *Roe v. Wade* and *Casey v. Planned Parenthood*. . . . Rudofsky is unfit and would bring a clear bias to the bench.

In a 2017 blog post, Ms. Gupta advocated for forcing Colorado baker, Jack Phillips, to create a custom-designed cake celebrating a same-sex wedding even though it would violate his religious beliefs. She said:

Religious liberty is not a talisman that confers absolute immunity from any personal constraints at all: At times, the free exercise of religion yields to other foundational values, including freedom from harm and [freedom from] discrimination.

Now, fortunately, in this instance, Supreme Court Justices—seven of the nine Supreme Court Justices, in fact—disagreed with her position in the *Mastertpiece Cakeshop* case.

Now, she has reiterated this sentiment time and time again. In 2017, she tweeted: "Yes, freedom of religion is a fundamental right, but it is not an absolute right."

After the Supreme Court ruled in favor of the conscience rights of the Little Sisters' of the Poor, she called the decision "troubling" and "discrimination sanctioned by the Court," writing that "this type of discrimination will potentially inflict harm on hundreds of thousands of people and disproportionately impact women of color and people in lower-income groups."

Now, let me be very clear on this issue. Let me be very clear about what

she was talking about. Ms. Gupta in that statement was indicating that she thought the government should force a convent of nuns who have taken vows of celibacy to provide birth control against their religious convictions.

That is troubling, and that is not consistent with our understanding of the free exercise of religion. Look, no one would argue that any one constitutional right is absolute, in that no other consideration can ever come into play. No one would argue that a generally applicable religiously neutral law can have no application ever where it conflicts in some way with an assertion of religious freedom. We are not talking here about whether it is absolute or not. But her own application of that would be deeply troubling I think to most Americans.

What also concerns me is whether, with the force of the U.S. Department of Justice behind her, whether she is capable of respecting the constraints of the law, of the Constitution, and of federalism.

In her efforts to push her policy preferences and reward those with whom she disagrees, I am very concerned that she might stretch the boundaries of her authority much further than it was ever intended to go.

Ms. Gupta has exhibited on Twitter and elsewhere that she is someone who holds very strident political views, views that many would regard as very radical, and I feel neither confident nor comfortable that she will respect those with views contrary to her own.

On that basis, I urge my fellow Senators to vote against Ms. Gupta and this illegitimate motion to discharge. I urge President Biden to send us nominees who will achieve his stated goal of unifying our country and not dividing it.

I yield the floor.

The PRESIDING OFFICER (Mr. VAN HOLLEN). The Senator from Illinois is recognized.

MOTION TO DISCHARGE

Mr. DURBIN. Mr. President, my friend and colleague from Utah is not the first to come to the floor on the Republican side and raise questions about committee procedure that led to Vanita Gupta being considered today before the U.S. Senate.

They say it is unheard of, unthinkable, unimaginable, unfathomable that the Senate committee rules were not carefully followed and that their attempt at a filibuster was in some way diverted.

I would ask unanimous consent to have printed into the RECORD a memo entitled "Senate Judiciary Committee Rule Violations by [Senate Judiciary Committee] Chairs Graham, Grassley, and Hatch."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE JUDICIARY COMMITTEE RULE VIOLATIONS BY CHAIRS GRAHAM, GRASSLEY, AND HATCH

CHAIRMAN GRAHAM RULE VIOLATIONS
Graham (116th Cong.)